

Message Text

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ACTION L-01

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FM AMCONSUL HONG KONG
TO SECSTATE WASHDC 5146
INFO AMEMBASSY LONDON

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E.O. 11652: N/A
TAGS: APER, CGEN
SUBJECT: REQUEST FOR GUIDANCE ON LEGAL MATTER

1. IN FEBRUARY 1975 ONE OF THE CONSULS ASSIGNED TO THIS CONGEN WAS ARRESTED FOLLOWING ACCIDENT INVOLVING ONLY HIS OWN CAR WHICH WAS NOT SERIOUSLY DAMAGED. HOWEVER, POLICE ALLEGED THAT OFFICER WAS DRUNK AND ABUSED POLICE. THEIR REPORT ON CASE WHICH WE HAVE SEEN AND WHICH THEY WOULD SUPPORT IN COURT SEEMED VERY STRONG. PENALTY UPON CONVICTION IS FINE, USUALLY AROUND US\$200, AND LOSS OF DRIVING LICENSE.

2. DAY AFTER ACCIDENT AND FOLLOWING USUAL CUSTOM CONGEN CONTACTED HKG PROTOCOL OFFICE WHICH AGAIN ACCORDING TO LOCAL PRACTICE SAID THAT CASE WOULD PROBABLY BE DISMISSED. ACCORDINGLY, CONGEN DID NOT ALERT DEPARTMENT NOR TAKE ANY ADMINISTRATIVE ACTION AND OFFICER DID NOT PREPARE DEFENSE. HOWEVER, IN LATE APRIL WE WERE TOLD THAT ATTORNEY GENERAL WISHED TO PROSECUTE. (STORY IS THAT ATTORNEY GENERAL WISHED TO RECOUP FAILURE OF HIGHLY PUBLICIZED PROSECUTION OF HK JUDGE FOR SAME OFFENSE). OUR PROTESTS OVER THIS REVERSAL OF OUR UNDERSTANDING DREW HKG POLITICAL ADVISER INTO THE ACT WHO UNDERTOOK TO TRY
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TO TALK COLONIAL AUTHORITIES OUT OF CONTINUING WITH CASE.

POLAD, SOMEWHAT TO HIS CHAGRIN, WAS UNSUCCESSFUL AND OFFICER WAS SERVED WITH SUMMONS TO APPEAR MAY 19.

3. SINCE I FELT WE HAD BEEN SERIOUSLY LED ASTRAY BY HKG AND POLAD HAD EARLIER TOLD ATTORNEY GENERAL WE WOULD THEREFORE REACT STRONGLY, I INSTRUCTED OFFICER NOT TO APPEAR AND FOR HIS LAWYER TO REQUEST POSTPONEMENT TO ENABLE US TO OBTAIN INSTRUCTIONS FROM DEPARTMENT. AFTER MY PERSONAL INTERVENTION WITH COLONIAL SECRETARY, CASE WAS POSTPONED UNTIL JUNE 16.

4. REQUEST DEPARTMENT'S ADVICE AS TO WHETHER WE HAVE ADEQUATE GROUNDS TO ASK IMMUNITY AND WHETHER EVEN IF WE DO WE SHOULD MAKE THE EFFORT. PERTINENT PORTION OF CONSULAR RELATIONS ORDINANCES (CHAPTER 259). FIRST SCHEDULE, ARTICLE 43, STATES THAT "CONSULAR OFFICERS ARE NOT AMENABLE TO JURISDICTION IN RESPECT TO ACTS PERFORMED IN THE EXERCISE OF THEIR CONSULAR FUNCTIONS." NO OTHER LAWS APPLY AND "CONSULAR FUNCTIONS" ARE NOT DEFINED. OFFICER WAS GOING HOME FROM CONGEN WHEN ALLEGED OFFENSE OCCURRED AND HE HAD DONE SOME WORK ALTHOUGH DAY, FEBRUARY 11, WAS HONG KONG HOLIDAY. IS TRAVELLING TO AND FROM CONGEN A SUSTAINABLE "CONSULAR FUNCTION" AND ARE THERE PRECEDENTS WE CAN CITE TO THIS EFFECT?

5. WE WOULD LIKE TO MAKE AN ISSUE OF THIS CASE BUT NOT OF COURSE IF WE WOULD CERTAINLY LOSE, SINCE THERE ARE PR ASPECTS WITHIN US COMMUNITY WHICH MUST BE TAKEN INTO ACCOUNT. IF DEPARTMENT FEELS WE CAN AND SHOULD GO AHEAD TO PLEAD IMMUNITY, PLEASE INFORM US SOONEST OF PROCEDURES TO BE FOLLOWED. WE ARE TRYING TO HOLD THIS CLOSELY IN FRONT OFFICE FOR OBVIOUS REASONS AND ARE THEREFORE UNABLE TO SEARCH FILES AND READ REGULATIONS FOR GUIDANCE.
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